

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES PLAS SAMS,

Plaintiff,

v.

LEANNA LUNDY, et al.,

Defendants.

Case No. 1:23-cv-0172 JLT HBK

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION WITHOUT
PREJUDICE

(Doc. 20)

James Sams proceeded *pro se* in this action, in which he sought to hold the defendants liable for violations of his civil rights pursuant to 42 U.S.C. § 1983. The Court dismissed the action after finding Plaintiff failed to prosecute the matter and failed to comply with the Court's order. (Doc. 18.) Plaintiff now seeks reconsideration of the dismissal pursuant to Rule 60(b)(6), asserting "excusable neglect" and other circumstances warrant relief. (Doc. 23 at 1.) For the reasons set forth below, the motion for reconsideration is **DENIED** without prejudice.

I. Procedural Background

Plaintiff initiated this action by filing a complaint on February 6, 2023. (Doc. 1.) After Plaintiff submitted a change of address, indicating his release from custody, Court ordered him to either submit an application to proceed *in forma pauperis* or pay the filing fee. (Docs. 8, 9.) Plaintiff then renewed his request to proceed *in forma pauperis*, and the Court granted the request on August 23, 2023. (Docs. 10, 11.)

1 The magistrate judge screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and
 2 found he failed to state a claim. (Doc. 12.) The Court informed Plaintiff that he had three
 3 options: (1) file an amended complaint, (2) notify the Court he wished to stand on the complaint,
 4 or (3) file a notice of voluntary dismissal. (*Id.* at 10-11.) Plaintiff requested reconsideration, and
 5 the Court denied the motion. (Docs. 13, 15.) The Court ordered Plaintiff to file any amended
 6 complaint no later than February 2, 2024. (Doc. 15 at 2.) The Court also informed Plaintiff that
 7 if he "faile[ed] to timely comply with this Court Order or seek an extension of time to comply," it
 8 would result in dismissal. (*Id.* at 3.)

9 After Plaintiff did not file an amended complaint or take any another action, the
 10 magistrate judge found Plaintiff failed to prosecute the action and failed to obey the Court's
 11 order. (Doc. 17.) The magistrate judge considered the factors identified by the Ninth Circuit in
 12 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986), and recommended dismissal of the
 13 action. (*Id.* at 3-5.) The Court served these Findings and Recommendations on Plaintiff at the
 14 address on record. However, the U.S. Postal Service returned the Court's mail as "Undeliverable,
 15 Return to Sender, Not Deliverable as Addressed" on February 29, 2024.

16 Under Local Rule 183(b), Plaintiff had 63 days to file any notice of change of address
 17 with the Court following the return by the U.S. Postal Service.¹ Accordingly, the Court waited
 18 nearly 80 days prior to taking any further action in the case. On May 17, 2024, the Court
 19 reviewed the record, adopted the Findings and Recommendations, and dismissed the action
 20 without prejudice for Plaintiff's failure to prosecute and failure to obey the Court's order. (Doc.
 21 18.) The Court entered judgment the same date. (Doc. 19.)

22 On January 24, 2025, Plaintiff filed the pending motion for reconsideration, seeking relief
 23 under Rule 60(b)(6) of the Federal Rules of Civil Procedure. (Doc. 20.)

24 **II. Relief under Rule 60(b)**

25 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, "[o]n motion and just
 26 terms, the court may relieve a party or its legal representative from a final judgment, order, or

27 ¹ This Local Rule has since been amended to allow 30 days. See Local Rule 183(b) (effective Jan. 1, 2025).
 28 However, at the relevant time, Local Rule 183(b) granted pro se litigants 63 days to provide a chance of address. See
 Local Rule 183(b) (effective Aug. 7, 2023).

1 proceeding.” *Id.* Rule 60(b) indicates such relief may be granted “for the following reasons:”

- 2 (1) mistake, inadvertence, surprise, or excusable neglect;
- 3 (2) newly discovered evidence that, with reasonable diligence, could not
have been discovered in time to move for a new trial under Rule 59(b);
- 4 (3) fraud (whether previously called intrinsic or extrinsic),
misrepresentation, or misconduct by an opposing party;
- 5 (4) the judgment is void;
- 6 (5) the judgment has been satisfied, released, or discharged; it is based
on an earlier judgment that has been reversed or vacated; or applying it
prospectively is no longer equitable; or
- 7 (6) any other reason that justifies relief.

8 Fed. R. Civ. P. 60(b).

9 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
10 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
Bishop, 229 F. 3d 877, 890 (9th Cir. 2000) (citation omitted); *see also Harvest v. Castro*, 531
11 F.3d 737, 749 (9th Cir. 2008) (addressing reconsideration under Rule 60(b)). “A motion for
12 reconsideration should not be granted, absent highly unusual circumstances, unless the district
13 court is presented with newly discovered evidence, committed clear error, or if there is an
14 intervening change in the controlling law,” and it “may not be used to raise arguments or present
15 evidence for the first time when they could reasonably have been raised earlier in the litigation.”
16 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)
17 (internal quotations marks, citations omitted). The moving party “must demonstrate both injury
18 and circumstances beyond his control” *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)
19 (internal quotation marks, citation omitted).

20 **III. Discussion and Analysis**

21 Plaintiff contends relief is appropriate because during February 2024 a police officer and
22 real estate agent “went into a house Plaintiff rented and disposed of ... [his] filed and other
23 property.” (Doc. 20 at 1.) Plaintiff asserts he had “drafted a new complaint,” and suggests it was
24 amongst this property that was disposed. (*Id.*) He reports that he became homeless when the
25 police disposed of his property. (*Id.*) He also reports that he had been incarcerated “for about six
26

1 months,” or since June 2024, and “the Los Angeles County Jail where [he]… had been
 2 incarcerated does not provide any access to a law library, [or]any addresses to courts.” (*Id.* at 1-
 3 2.) Plaintiff contends that he “ha[d] just obtained the case number and the address to this Court”
 4 prior to filing the pending motion. (*Id.* at 2.) He argues that reconsideration is warranted due to
 5 excusable neglect, and he seeks relief under Rule 60(b)(6). (*Id.* at 3.)

6 **A. Contradiction with the record**

7 As an initial matter, Plaintiff asserts, “This case and Sams v. CDCR, 5:21-cv-00493-ODW
 8 (JDE) (C.D. Cal) were dismissed due to no address.” (Doc. 20 at 1.) He contends the Central
 9 District reopened his case, and this Court should do the same. (*Id.* at 2.) However, Plaintiff’s²
 10 assertions are contradicted by the record of this Court and the Central District.

11 This action was not dismissed because the Court lacked a mailing address for Plaintiff.
 12 Rather, as discussed above, the Court found Plaintiff failed to prosecute the action and failed to
 13 comply with the Court’s orders. (*See* Doc. 17.) These findings were made before Plaintiff’s
 14 failure to provide a current address. However, the Court noted also that dismissal was appropriate
 15 for Plaintiff’s failure to comply with the Local Rules after the Findings and Recommendations
 16 were returned as undeliverable. (*See* Doc. 18 at 2.)

17 Similarly, the Central District did not dismiss Case No. 5:21-cv-00493 for failure to
 18 provide a proper mailing address.² Plaintiff filed a notice of change of address in the Central
 19 District matter, and the action proceeded until September 2024, when Plaintiff failed to file
 20 pretrial documents as ordered. The Central District dismissed Plaintiff’s action for failure to
 21 prosecute and failure to comply with Court’s orders on September 25, 2024. (Case No. 5:21-cv-
 22 00493, Doc. 131.) The court recently denied Plaintiff’s motions for reconsideration and declined
 23 to reopen the action. (*Id.*, Docs. 158, 162.) Toward this end, Plaintiff’s assertion that the Court
 24 should re-open the action similar to the Central District is without merit.

25 ² The Court may take notice of facts that are capable of accurate and ready determination by resort to sources whose
 26 accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331, 333
 27 (9th Cir. 1993). The record of a court proceeding is a source whose accuracy cannot reasonably be questioned, and
 28 judicial notice may be taken of court records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir.
 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff’d* 645 F.2d 699 (9th Cir. 1981).
 Accordingly, the Court takes limited judicial notice of the docket and records in *Sams v. CDCR*, Case. No. 5:21-cv-
 00493-ODW-JDE.

1 **B. Excusable neglect**

2 Rule 60(b)(1) allows a court to vacate a final judgment that is based on “mistake,
 3 inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1). To assess whether missing
 4 a filing deadline constitutes excusable neglect, courts use a four-factor test. *Pioneer Inv. Servs.*
 5 *Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380 (1993). The *Pioneer* test is “an equitable one, taking
 6 account of all relevant circumstances surrounding the party’s omission,” including (1) the danger
 7 of prejudice to the defendant, (2) the length of the delay and its potential impact on judicial
 8 proceedings, (3) the reason for the delay, including whether it was within the reasonable control
 9 of the plaintiff, and (4) whether the plaintiff acted in good faith.” *Id.* at 395 (internal citation
 10 omitted). The Supreme Court emphasized that “inadvertence, ignorance of the rules, or mistakes
 11 construing the rules do not usually constitute ‘excusable’ neglect.” *Id.* at 392.

12 The limited information before the Court does not support a conclusion that Plaintiff
 13 exhibited “excusable” neglect. Though Plaintiff asserts that he became homeless in February
 14 2024, his amended complaint was due on February 2, 2024. Any amended complaint should have
 15 been mailed *prior* to the property disposal that occurred. Moreover, it is unclear why Plaintiff
 16 was not able to file a notice of change of address in this Court—or take any other action to
 17 prosecute the pending action—when Plaintiff provided a mailing address to the Central District
 18 on March 25, 2024. There is no explanation why Plaintiff did not take any action on this matter
 19 between February 2024 and his reincarceration in June 2024, when he was housed at a facility
 20 without law library access initially. Given the sparse information—and contradictions between
 21 the records and Plaintiff’s assertions—the Court is unable to find the *Pioneer* factors support his
 22 request for relief under Rule 60(b)(1).

23 **B. Extraordinary circumstances**

24 “To receive relief under Rule 60(b)(6), a party must demonstrate extraordinary
 25 circumstances which prevented or rendered him unable to prosecute his case.” *Lal v. California*,
 26 610 F.3d 518, 524 (9th Cir. 2010) (cleaned up). Plaintiff fails to identify extraordinary
 27 circumstances prevented his compliance with the Court’s order to file an amended complaint
 28 prior to dismissal of the action. Accordingly, relief is not appropriate under Rule 60(b)(6).

1 **IV. Conclusion and Order**

2 Based on the foregoing, the Court **ORDERS**: Plaintiff's Rule 60(b) motion for
3 reconsideration (Doc. 20) is **DENIED** without prejudice.

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5 IT IS SO ORDERED.
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Dated: May 31, 2025


UNITED STATES DISTRICT JUDGE

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